

1 BILL NO. S-83-05-08

2 SPECIAL ORDINANCE NO. S-94-83

3 AN ORDINANCE approving a contract  
4 by the City of Fort Wayne by and  
5 through its Board of Public Works  
6 and Tomco Construction, Inc., for  
7 Res. #5967-83, curbs, sidewalks  
8 & drive approaches, Pontiac Place  
9 Greater McMillen.

10 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF  
11 THE CITY OF FORT WAYNE, INDIANA:

12 SECITON 1. The annexed Contract, made a part hereof,  
13 by the City of Fort Wayne by and through its Board of Public  
14 Works and Tomco Construction, Inc., for Res. #5967-83, Pontiac  
15 Place, Greater McMillen, is hereby ratified and affirmed and ap-  
16 proved in all respects. The work under said Contract requires:

17 curbs, sidewalks & drive approaches where  
18 needed within the limits of the following  
19 streets:

20 GREATER McMILLEN, I - Abbott, from Pontiac  
21 to Manford;  
22 Queen, from Pontiac  
23 to Manford

24 PONTIAC PLACE, I - Alexander, from Pontiac  
25 to Colerick;  
26 Plaza, from Pontiac to  
27 Colerick - S.W. corner  
28 Euclid & Drexel;

29 the Contract price is One Hundred Seventeen Thousand Six Hundred  
30 Ninety and 05/100 Dollars (\$117,690.05).

31 SECTION 2. Prior approval was received from Council  
32 with respect to this Contract on March 21, 1983. Two (2) copies  
33 of the Contract attached hereto are on file with the City Clerk,  
34 and are available for public inspection.

SECTION 3. That this Ordinance shall be in full force  
and effect from and after its passage and any and all necessary  
approval by the Mayor.

APPROVED AS TO FORM  
AND LEGALITY

Bruce O. Boxberger, City Attorney

Samuel Talarico  
Councilmember

Read the first time in full and on motion by Talarico,  
seconded by Stier, and duly adopted, read the second time  
by title and referred to the Committee Public Works (and the City  
Plan Commission for recommendation) and Public Hearing to be held after  
due legal notice, at the Council Chambers, City-County Building, Fort Wayne,  
Indiana, on \_\_\_\_\_, the \_\_\_\_\_ day of  
\_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., E.S.T.

DATE: 5-10-82

Wendy C. Eberly  
Acting CITY CLERK

Read the third time in full and on motion by Talarico,  
seconded by Stier, and duly adopted, placed on its  
passage. PASSED (LOST) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>9</u>	<u>0</u>	_____	_____	_____
<u>BRADBURY</u>	<u>✓</u>	_____	_____	_____	_____
<u>BURNS</u>	<u>✓</u>	_____	_____	_____	_____
<u>EISBART</u>	<u>✓</u>	_____	_____	_____	_____
<u>GIAQUINTA</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCHMIDT</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCHOMBURG</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCRUGGS</u>	<u>✓</u>	_____	_____	_____	_____
<u>STIER</u>	<u>✓</u>	_____	_____	_____	_____
<u>TALARICO</u>	<u>✓</u>	_____	_____	_____	_____

DATE: 5-24-82

Sandra E. Kennedy  
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,  
Indiana, as (~~ZONING MAP~~) (~~GENERAL~~) (~~ANNEXATION~~) (~~SPECIAL~~)  
(~~APPROPRIATION~~) ORDINANCE (RESOLUTION) NO. J-94-82  
on the 24th day of May, 1982.

ATTEST:

(SEAL)

Sandra E. Kennedy  
CITY CLERK

Ray A. Ebert  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on  
the 25th day of May, 1982, at the hour of  
11:30 o'clock A.M., E.S.T.

Sandra E. Kennedy  
CITY CLERK

Approved and signed by me this 26th day of May  
1982, at the hour of 9 o'clock A.M., E.S.T.

Win Moses, Jr.  
WIN MOSES, JR. - MAYOR

# CONTRACT

Curb Removal	One dollar and thirty cents per lineal foot	1.30
New Curb, Type II-B	Six dollars and fifty cents per lineal foot	6.50
Concrete Removal	Two dollars and thirty cents per square yard	2.30
New 4" Sidewalk	One dollar and thirty-eight cents per square foot	1.38
New 6" Drive	Fifteen dollars and seventy-five cents per square yard	15.75
New 8" Alley	Sixteen dollars and no cents per square yard	16.00
New 9" Concrete	Sixteen dollars and twenty-five cents per square yard	16.25
New Corner Wingwalk (INCL. Ramps)	One dollar and seventy-five cents per square foot	1.75
Asphalt Patching	No dollars and twenty-five cents per lineal foot	0.25
Seed	No dollars and thirty cents per square yard	0.30
Topsoil	Three dollars and no cents per ton	3.00
Tree Removal	Two hundred and fifty dollars and no cents per each	250.00

The Contractor hereby expressly agrees to perform all the work in the prosecution of the above described improvement according to the terms and conditions of Improvement Resolution No. 5967-83 the plans, profiles, specifications and the contractor's bid therefor on file in the office of the Department of Public Works of said City, which said resolution, profile, plans and specifications are made a part of this contract as fully and effectually as if copied herein at full length, (copies of which are attached hereto).

It is hereby agreed that no assignment of this contract shall be made without the written consent of the City; said Contractor hereby covenants and agrees that said improvement shall be finally and in all respects completed on or before \_\_\_\_\_, 19\_\_\_\_ and the Contractor agrees to pay and give to the City, as liquidated damages, the sum of \$25.00 for each and every day after said date \_\_\_\_\_, 19\_\_\_\_ until said work is finally completed and ready for acceptance by the City. It being also understood that in event of any conflict between this contract and the specifications, that the former shall be considered to contain the intention of the parties hereto.

It is further agreed by and between said parties, that the acceptance of the work provided for in this contract, or the payment therefor, for the whole or a part, shall not constitute a waiver on the part of the City of any of the provisions of the contract, nor shall it release said Contractor, or the sureties upon its bond for the faithful performance thereof, nor shall the acceptance be even prima facie evidence of the performance of any provisions of such contract except to the extent of entitling said Contractor to receive the price therefor. It is further understood that the failure of the City to exercise its right of inspection or rejection of material and work, or the exercise of such right shall not in any sense be considered an acceptance of any part of said work or material.

The Contractor further contracts and agrees that in the prosecution of said work all proper skill and care will be exercised, that said party will properly and fully guard all excavations and dangerous places, and will use all due and proper precautions to prevent injury to any property, person and persons, what or whomsoever. That for and during the period of the making of such improvement, and the period for which the same is to be maintained and kept in repair by the Contractor, the City shall be saved harmless from any and all liability whatsoever growing out of any injury or damage to property or persons because of any neglect or fault of the said Contractor, its agents or employees, in the execution of this contract or any matter connected therewith or related thereto and to pay any judgment with costs which may be obtained against said City, growing out of any such injury or damage.

To each of the conditions and stipulations in this contract, the undersigned bind themselves, their successors and assigns.

IN WITNESS WHEREOF, we the foregoing named parties hereunto set our hands this 28

day of April, 1983

ATTEST: [Signature]  
Corporate Secretary

TOMKO CONSTRUCTION CO., INC.

BY: [Signature]

ITS: PRES

Contractor, Party of the First Part.

City of Fort Wayne, By and Through:

[Signature]  
[Signature]  
[Signature]

Its Board of Public Works and Mayor.

ATTEST:

[Signature]  
Secretary and Clerk

[Signature]

ASSOCIATE CITY ATTORNEY

Contract for Improvement Resolution No. 5967-83 (Continued)

New C.B. Casting, Type "C" Adj. to Grade	Two hundred dollars and no cents per each	200.00
New 2" Conduit	One dollar and no cents per lineal foot	1.00
New Curb, Type I-S	Two dollars and ninety cents per lineal foot	2.90
SUB TOTAL	One hundred and ten thousand, one hundred and one dollars and fifty cents	\$110,101.50

ALTERNATE I

Concrete Removal	One dollar and sixty-five cents per square yard	1.65
New 4" Sidewalk	One dollar and thirty-eight cents per square foot	1.38
New 6" Drive	Fifteen dollars and seventy-five cents per square yard	15.75
Seed	No dollars and thirty cents per square yard	0.30
Topsoil	Three dollars and no cents per ton	3.00
New 2" Conduit	One dollar and no cents per lineal foot	1.00
Common Excavation	Eight dollars and no cents per cubic yard	8.00
SUB TOTAL	Seven thousand, five hundred and eighty-eight dollars and fifty-five cents	\$7,588.55
TOTAL	One hundred and seventeen thousand, six hundred and ninety dollars and five cents	\$117,690.05

The Contractor will furnish immediately a certificate from the Industrial Board of the State of Indiana that he has complied with Sections 5, 68, 69 of the Workmen's Compensation Act, approved March 14, 1929, in accordance with Section 14 of the Compensation Act (Acts 1929, page 545, being I.C. 22-3-2-1 et. seq.).

A copy of General Ordinance No. G-34-78 (as amended) concerning discriminating in employment under municipal contracts, is attached and incorporated herein by reference.

PERFORMANCE AND GUARANTEE BOND

13-01-0196

KNOW ALL MEN BY THESE PRESENTS, that we TOMCO CONSTRUCTION CO., INC.  
as Principal, and the PRESIDIO INSURANCE COMPANY

\_\_\_\_\_, a corporation organized under the laws of the  
State of Ohio, and duly authorized to transact business in the  
State of Indiana, as Surety, are held firmly bound unto the City of Fort Wayne,  
Indiana, an Indiana Municipal Corporation in the sum of ONE HUNDRED AND SEVENTEEN  
THOUSAND, SIX HUNDRED AND NINETY DOLLARS AND FIVE CENTS -----

(\$ 117,690.05-----), for the payment whereof well and truly to be made,  
the Principal and Surety bind themselves, their heirs, executors, administrators,  
successors and assigns, jointly and severally, firmly by these presents. The  
condition of the above obligation is such that

WHEREAS, the Principal did on the 20th day of April, 19 83,  
enter into a contract with the City of Fort Wayne to construct

Improvement Resolution No. 5967-83

To improve curbs, sidewalks, and drive approaches where needed within the limits  
of the following streets:

GREATER McMILLEN, I - Abbott, From Pontiac to Manford  
Queen, From Pontiac to Manford  
PONTIAC PLACE, I - Alexander, From Pontiac to Colerick.  
Plaza, From Pontiac to Colerick, S.W. Cor. Euclid & Drexel  
ALTERNATE I - McKee, From Alexander to Central

at a cost of \$ 117,690.05-----, according to certain plans and specifications  
prepared by or approved by the City.

WHEREAS, the grant of authority by City to so construct such improvement  
provides:

1. That said improvement shall be completed according to said plans and specifications, and contractor shall warrant and guarantee all work, material, and conditions of the improvement for a period of three (3) years from the date of final acceptance in writing by the Owner;
2. There shall be filed with the City, within thirty (30) days after completion, a Completion Affidavit;
3. Said Principal is required to agree to make such adjustments, modifications, and repairs as required by the City within thirty (30) days after notice.

WHEREAS, said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work or to the specifications.

NOW THEREFORE, if the principal shall faithfully perform all of the terms and conditions required of it by the contract and shall for three (3) years after acceptance of said improvement by City warrant and guarantee said improvement and shall indemnify the City for all loss that City may sustain by reason of the Principal's failure to comply with any of the terms of the authorization, then this obligation shall be void, otherwise it shall remain in full force and effect.

TOMCO CONSTRUCTION CO., INC.

(Contractor)

BY: [Signature]

ITS: PEES

ATTEST:

[Signature]

(Title)

PRESIDIO INSURANCE COMPANY

Surety

\*BY: [Signature]

Authorized Agent  
(Attorney-in-Fact)  
J. R. MORFORD

\*If signed by an agent, power of attorney must be attached

PAYMENT BOND

13-01-0196

KNOW ALL MEN BY THESE PRESENTS: that

----- TOMCO CONSTRUCTION CO., INC. -----

(Name of Contractor)

----- 1835 Berkley Avenue, Fort Wayne, Indiana 46815 -----

(Address)

a Corporation, hereinafter called Principal,  
(Corporation, Partnership or Individual)

and PRESIDIO INSURANCE COMPANY  
(Name of Surety)

and duly authorized to transact business in the State of Indiana, hereinafter called Surety, are held and firmly bound unto the City of Fort Wayne, an Indiana Municipal Corporation in the penal sum of ONE HUNDRED AND SEVENTEEN THOUSAND, SIX HUNDRED AND NINETY DOLLARS AND FIVE CENTS -----  
for the payment whereof well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the Owner, dated the 20th day of April, 19 83, for the construction of:

Improvement Resolution No. 5967-83

To improve curbs, sidewalks, and drive approaches where needed within the limits of the following streets:

GREATER McMILLEN, I - Abbott, From Pontiac to Manford  
Queen, From Pontiac to Manford  
PONTIAC PLACE, I - Alexander, From Pontiac to Colerick  
Plaza, From Pontiac to Colerick, S.W. Cor. Euclid & Drexel  
ALTERNATE I - McKee, From Alexander to Central

at a cost of ONE HUNDRED AND SEVENTEEN THOUSAND, SIX HUNDRED AND NINETY DOLLARS AND FIVE CENTS -----

(\$117,690.05-----), all according to Fort Wayne Street Engineering Department plans and specifications.

WHEREAS, said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work or to the specifications, and

WHEREAS, no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such work, and all insurance premiums on said work, and for all labor, performed in such work whether by subconstructor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF, this instrument is executed in 3 counter-  
(number)  
parts, each one of which shall be deemed an original, this 20th day of  
April, 19 83.

(SEAL)

ATTEST:

[Signature]  
(Principal) Secretary

TOMCO CONSTRUCTION CO., INC.

Principal

BY

[Signature]  
PRES

(Title)

1835 BECKLEY AVE. ELWANE  
(Address)

Witness as to Principal

(Address)

PRESIDIO INSURANCE COMPANY

Surety

BY

[Signature]  
Attorney-in-Fact  
(Authorized Agent)

J. R. MORTFORD

129 East Market, Rm. 1204  
(Address)

Indianapolis, Indiana

[Signature]  
Witness as to Surety

2211 Woodsway Drive  
(Address)

Greenwood, Indiana 46142

NOTE: Date of Bond must not be prior to date of Contract.  
If Contractor is Partnership, all partners should execute bond.



*Prior approval  
received*

*3/21/83*

BILL NO. S-83-05-08

REPORT OF THE COMMITTEE ON PUBLIC WORKS

WE, YOUR COMMITTEE ON Public Works TO WHOM WAS REFERRED AN  
ORDINANCE approving a contract by the City of Fort Wayne by and through  
its Board of Public Works and Tomco Construction, Inc., for Res. #5967-83,  
curbs, sidewalks & drive approaches, Pontiac Place Greater McMillen

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT  
BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE Do PASS.

SAMUEL J. TALARICO, CHAIRMAN

*Samuel J. Talarico*

VICTURE L. SCRUGGS, VICE CHAIRMAN

*Victure L. Scruggs*

MARK E. GIAQUINTA

*Mark E. Giaquinta*

PAUL M. BURNS

*Paul M. Burns*

ROY J. SCHOMBURG

*Roy J. Schomburg*

*Concurred 5-24-83*

*S. Kennedy*

DIGEST SHEET

6270

J-83-05-08

TITLE OF ORDINANCE Contract for Res. 5967-83, Pontiac Place, Greater  
McMillen with Tomco Construction Co., Inc.

DEPARTMENT REQUESTING ORDINANCE Board of Public Works

SYNOPSIS OF ORDINANCE This contract with Tomco Construction Co., Inc.  
is for Improvement Res. #5967-83 for curbs, sidewalks & drive approach  
where needed within the limits of the following streets:

GREATER McMILLEN, I - Abbott, from Pontiac to Manford  
Queen, from Pontiac to Manford

PONTIAC PLACE; I - Alexander, from Pontiac to Colerick  
Plaza, from Pontiac to Colerick - S.W. cor.  
Euclid & Drexel

PRIOR APPROVAL RECEIVED  
3/21/83

EFFECT OF PASSAGE Improvement of above area.

EFFECT OF NON-PASSAGE \_\_\_\_\_

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) \$117,690.05

ASSIGNED TO COMMITTEE (PRESIDENT) \_\_\_\_\_